

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

M&M Ford Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay

Employer: M&M Ford Inc, PO Box 490, Epsom NH 03234

Date of Hearing: July 2, 2018

Case No.: 57053

BACKGROUND AND STATEMENT OF THE ISSUES

This hearing was consolidated with another claim against the same employer. Separate decisions have been issued for each case.

The claimant asserts he is owed \$909.82 in unpaid vacation pay which was due upon the closing of the employer in April 2018. The employer provided a check for vacation pay, but the check is not cashable.

The employer denies the claimant is due any vacation pay pursuant to their written policy.

FINDINGS OF FACT

The employer ceased their business operations in May 2018.

The parties agree the claimant had eighty hours of vacation pay on the books.

The employer issued a check to the claimant for eighty hours of vacation pay on April 5, 2018, for \$909.82, net of taxes. The claimant has not been able to cash this check as the funds have not been available upon presentation to the employer's financial institution.

The claimant seeks payment of this check.

The employer argues they are not required to pay vacation pay as their written policy states, in relevant part, "If you are dismissed from the company you forfeit any unused vacation time."

While this policy would exempt the employer from paying vacation pay to the claimant under RSA 275:49, the employer chose to ignore their policy and issue a check to the claimant, which is not cashable, in contravention of RSA 275:43 I. The employer agreed the check was valid and contained a valid signature of Harold Maloney Sr, President of M&M Ford Inc.

Vacation pay becomes wages, when due, pursuant to RSA 275:49. The vacation pay is now due as wages, because the employer issued a check that is not cashable.

Because the employer issued a check for the vacation pay that is not cashable, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed vacation pay/wages in the amount of \$909.82, net of taxes.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that he is due the claimed vacation pay/wages, it is hereby ruled that the Wage Claim is valid in the amount of \$909.82.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$909.82, less any applicable taxes, within 20 days of the date of this Order.

[REDACTED]
Hearing Officer

Date of Decision: July 17, 2018

Original: Claimant
cc: Employer
Employer's Attorney